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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/823,041	03/30/2001	Francois Gugumus	A-22181/US/A	1010
324	7590	07/08/2003	9	
CIBA SPECIALTY CHEMICALS CORPORATION PATENT DEPARTMENT 540 WHITE PLAINS RD P O BOX 2005 TARRYTOWN, NY 10591-9005			EXAMINER	YOON, TAE H
ART UNIT		PAPER NUMBER		1714

DATE MAILED: 07/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)
09/823,041	Guganee
Examiner	Group Art Unit
T. Yoon	1714

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

Responsive to communication(s) filed on 6-20-03

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

Claim(s) 1 and 3-14 is/are pending in the application.

Of the above claim(s) _____ is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

Claim(s) 1 and 3-14 is/are rejected.

Claim(s) _____ is/are objected to.

Claim(s) _____ are subject to restriction or election requirement

Application Papers

The proposed drawing correction, filed on _____ is approved disapproved.

The drawing(s) filed on _____ is/are objected to by the Examiner

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

All Some* None of the:

Certified copies of the priority documents have been received.

Certified copies of the priority documents have been received in Application No. _____.

Copies of the certified copies of the priority documents have been received
in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

Information Disclosure Statement(s), PTO-1449, Paper No(s). _____ Interview Summary, PTO-413

Notice of Reference(s) Cited, PTO-892 Notice of Informal Patent Application, PTO-152

Notice of Draftsperson's Patent Drawing Review, PTO-948 Other _____

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 3-13 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 9193322.

Rejection is maintained for reason of record and following.

The recited preparation of a high density polyethylene with a phillips catalyst has little probative value absent particular properties for said high density polyethylene.

The translated copy of JP teaches that the polyethylene made by using metallocene catalyst has an extremely narrow molecular weight distribution over Zieler-Natta catalyst in [0007]-[0008]. Such narrow molecular weight distribution is the result of low branching which yields a high density, and applicant failed to show otherwise.

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An invention in a product-by-process claim is a product, not a process. See In re Brown, 459 F2d 531, 173 USPQ 685 (CCPA 1972) and In re Thorpe, 777 F2d 695, 697, 227 USPQ 964 (Fed. Cir. 1985). Since the PTO does not have equipments to conduct the test, it is fair to require applicant to shoulder the burden of proving that his polyethylene differs from those of JP. In re Best, 195 USPQ 430,433 (CCPA 1977).

Claims 1 and 3-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 9193322 in view of Birbaum et al (US 5,736,597).

Rejection is maintained for reason of record and above.

Homolog stabilizers of Birbaum et al are expected to work in the same way in JP, and the broad teaching ([0005] and [0013]) of JP encompasses homolog stabilizers of Birbaum et al. Birbaum et al teach various polymers at cols. 36-39 including HDPE. Applicant failed to show any unexpected result.

Claims 1 and 3-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Birbaum et al (US 5,736,597) or Avar et al (US 4,891,396) alone, or in view of JP 9193322, Musser et al (US 4,524,165), Jollenbeck et al (US 5,498,345), WO 97/39052 or Luethi et al (US 3,529,982).

Rejection is maintained for reason of record and following.

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Contrary to applicant's statement, the method of stabilizing polymers, any polymer in fact, by utilization of stabilizer mixtures in order to obtain a synergistic effect is a routine practice in the art as evidenced by Birbaum et al (cols. 36-39) since the inherent property of any given stabilizer would be the same in any polymer. For example, an antioxidant would act as an antioxidant in any polymer and would not act as a thermal stabilizer in a particular polymer.

Applicant failed to show unexpected result contrary to applicant's assertion. For example, tables 2, 3a and 7 show that one stabilizer, CHIMASSORB 81 (hydroxybenzophenone), has yielded the best result. No benefit of synergism is seen. In re Susi, 169 USPQ 423, CCPA 1971.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tae H. Yoon whose telephone number is (703) 308-2389. The examiner can normally be reached on Monday to Thursday from 8:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan, can be reached on (703) 306-2777. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9311.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

THY/July 3, 2003



TAE H. YOON
PRIMARY EXAMINER